IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P No. 5554 of 2007

Date of decision : 18.4.2007.

The Indian Airlines Pilots Cooperative House Building Society Limited, Pilot's Court, Essel Towers, Sector 28, Gurgaon

.....Petitioner

through Mr.Shailendra Jain, Advocate

v.

The State of Haryana & others,

.....Respondents

CORAM : HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Challenge, in the present writ petition, is to the sanction of Drawing No.DTCP-819, dated 4.11.2004 (Annexure P-13), memo. No.15956, dated 9.11.2004 (Annexure P-14), site/building plan, sanctioned vide memo. No.2276, dated 4.3.2005 (Annexure P-16), letter memo. No.11950, dated 26.4.2006 (Annexure P-25), and the impugned order, dated 30.3.2007 (Annexure P-28), passed by respondent No.1.

The petitioner-society purchased 30 acres of land in villages Sukhrali and Sarhaul in District Gurgaon and obtained a licence for development of land measuring 29.794 acres into a Group Housing Colony under the Haryana Development and Regulation of Urban Areas Act, 1975

(for short herein after referred to as "the Act"). The licence was granted, taking into consideration a Collaboration Agreement, dated 31.1.1995 with M/S Altamas Township Pvt. Ltd. The builder could not carry out development and, therefore, another agreement was executed with M/S Essel Housing Projects Pvt. Ltd on 8.5.1999. The zoning plan was sanctioned and as pleaded in the petition, construction commenced in the year 1999. The bone of contention is the grant of a licence of additional area of 4.20 acres, which the petitioner-Society alleges, was granted, without due authorization by the Society. It is alleged that Captain D.S.Giare, the then President of the Society colluded with the developers and wrote three letters, dated 6.10.2004, 6.10.2004 and 1.11.2004 on the letter heads of the Society for payment of additional licence fee, conversion charges, EDC etc. towards 0.5% commercial component, to be developed, pursuant to a new policy of the Government permitting a part of the colony to be developed into a commercial area. The altered zoning plan was approved on 18.5.2004. The petitioner-society alleges that it came to know about the altered zoning plan only when construction began. Thereafter, the petitioner-society served a notice upon the developer, titled as "cease and desist notice", complaining therein that the zoning had been altered and an additional licence for construction of an area of 4.20 acres issued without the consent of the society. The petitioner-society's complaints led respondent No.2 to issue a letter, dated 2.3.2006 asking the Society not to undertake any construction activity for a shopping complex. The petitioner-Society immediately communicated a letter to the developer. The Director, Town and Country Planning addressed another letter, dated 9.3.2006 to the District Town Planner, Enforcement Gurgaon asking him to immediately

stop construction and to submit a status report. The developer thereafter filed CWP No.4624 of 2006 challenging the letter, dated 2.3.2006. The said writ petition was disposed of , vide order dated 24.3.2006, by directing the respondents to dispose of proceedings as regards the notice, dated 2.3.2006 expeditiously. It is further alleged that in the absence of the society and without hearing the grievances, the developer was permitted, vide letter, dated 26.4.2006 to commence construction. The petitioner-society thereafter filed CWP No.6880 of 2006 before this Court. The said writ petition was disposed of with a direction to the Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department to decide the entire controversy within a period of six weeks. All parties appeared and filed detailed representations before the aforementioned officer. After hearing counsel for the parties and upon a perusal of the documents, the representation, made by the petitioner-society, was dismissed, and stay on construction of shopping area, approved in the building plans, vide letter dated 4.3.2005, vacated.

Counsel for the petitioner contends that the impugned order should be quashed, as the policy, provided for development of additional area, and the sanction of the revised building plan, was violative of the rights of the society. It is contended that change in the zoning does not take into consideration the rights, vested in the members of the society, as changes, sanctioned therein, have affected their rights. It is further contended that the society did not grant any permission to the developer, did not file any application before the authorities for alteration of the zoning or grant of new licence and merger of the new licence area in the original licence of the society. Captain D.S.Giare had no authority to act on behalf

of the society and, therefore, the present petition be allowed and the impugned order be quashed.

We have heard learned counsel for the petitioner and perused the paper book, as also the impugned order.

The Financial Commissioner and Principal Secretary to Government Haryana, Town and Country Planning Department has passed a detailed order, examined all issues, raised by the petitioner, and held against the petitioner. It has been specifically held that the application for grant of licence for additional area, was filed on 18.8.2003, by Captain D.S.Giare, the then President of the Society, who continued as President till 1.9.2004. This fact is fortified by averments in the representation, filed by the petitioner, before respondent No.1. It has also been held that at no stage was any communication received from the Society that the President was not competent to sign the application. As regards the competence of the developer to deposit licence fee and charges through letters, dated 6.10.2004 and 1.11.2004, with respect to acceptance of revised building plans etc., suffice it to say and as held by respondent No.1, that a irrevocable special power of attorney and a general power of attorney had been executed by the society in favour of the developer, providing for such an arrangement. Thus, it is apparent that the application, filed by the developer, did not suffer for want of authority. A perusal of the impugned order reveals that the grant of an additional licence of 4.20 acres, in accordance with the revised parameters has been upheld by the authorities. Relevant extract from the impugned order is reproduced as follows :-

> "15. As far as the development of this licenced colony is concerned, the Society and the developer are one entity

and the developer has also been authorised through irrevocable special power of attorney and general power of attorney as well as the bilateral agreement, dated 8.5.1999 for undertaking the activities relating to the development of the society. As has been corroborated from the dates and events submitted in the written statement of the Department, the Society has been requesting changes in the location of the building blocks, roads, open spaces and community sites in this complex and these have been approved by the Department keeping in view the applicable technical parameters. As far as the open spaces are concerned, the zoning plan provides for minimum 15% of organized open space in the form of totlots. The availability of 15% of organized open space has not been disputed by the society. The Director approved the revised zoning plan consequent upon alteration in the outer boundary of the scheme and to provide for better shopping facilities to the residents. While approving the building plans on 4.3.2005, the Director did not compromise with the basic technical parameters as the area under open spaces is approximately 17% in the revised plans against the minimum requirement of 15%. Hence keeping in view the above facts and circumstances, I find no illegality in approval of the revised zoning plan containing clauses to allow improved shopping faculties for the residents."

We find no illegality or error of jurisdiction in the impugned order, passed by respondent No.1. The zoning plan and the licence have been sanctioned in accordance with law and pursuant to the agreement between the developer and the society. The contention that open spaces etc. have been reduced has been dealt with by respondent No.1 and found to be incorrect. As no illegality is discernible in the impugned order, we find no reason to interfere. In case, there is any dispute between the builder and the society or within the society, the petitioner would be at liberty to seek adjudication thereof.

The present petition is dismissed being devoid of any merit.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

April 18, 2007
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